IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12752 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KALIDAS @ KALI RANGNATH MADRASHI

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR RC KODEKAR for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/04/2001

ORAL JUDGEMENT

#. Challenging the validity, propriety and correctness of the detention order dated 22.11.2000 passed by respondent No.1, in purported exercise of powers under sub-section 2 of Section 3 of the Gujarat Prevention of Antisocial Activities Act, 1985, the learned counsel for the petitioner raised manifold contentions but as this petition deserves acceptance only on one ground, I do not consider it to be necessary as well as in the interest of

saving of valuable and precious judicial time of the court to make reference to all those contentions and to give decision thereon.

#. One of the contention raised is that the statements of secret witnesses were recorded on 20.11.2000. Same were verified by the Police Commissioner, Ahmedabad City on 21.11.2000 and this detention order of the petitioner came to be made on 22.11.2000 and in view of this fact, the privilege claimed not to disclose the names, addresses of secret witnesses was not legally permissible to be claimed. In fact, there was no sufficient time to verify the genuineness, correctness of the apprehension which has been shown by the secret witnesses to justify the respondent No.1 not to disclose their names and addresses. By not disclosing the names and addresses in the garb of claiming this privilege, what the learned counsel for the petitioner contended that the petitioner has been deprived of his valuable right of making effective representation against the detention order as guaranteed to him under Article 22(5) of the Constitution.

#. The learned counsel for the petitioner submitted that this matter is squarely covered by decision of Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat reported in 1993(2) GLR 1659 and that of learned Single Judge (Coram: M.R.Calla, J.) in the case of Ranubhai Bhikhabhai Bharwad (Vekaria) v. State of Gujarat & Ors. reported in 2000(3) GLR 2696.

#. Reply to the special civil application has not been filed by respondents despite of the fact that they had more than sufficient time available. This petition was admitted on 13.12.200. Rule was made returnable on 10.1.2001. The respondents were directed to file affidavit in reply as to the grounds stated in the memo of petition by returnable date. As per order of this court, this reply was to be filed by respondents on or before 10.1.2001 but this has not been done. Not only this, thereafter, this matter came up for hearing in the court from time to time but reply has not been filed. On 7.3.2001, request made by respondents' counsel for grant of time to file reply to the special civil application has been granted despite of the fact that the same has been strongly opposed by learned counsel for the petitioner. This opportunity has also not been availed of. On 20.4.2001, this matter came up for hearing on which date on the request of counsel for the petitioner, the matter was adjourned to 27.4.2001, still reply has not been filed. From these facts, it is clearly borne

out and in fact and substance a reasonable inference can be drawn that the respondents are either extending helping hand to the petitioner so that there may not be any hurdle or obstacle in his way to get himself released of detention order from th`is court or the officers of the State Government are reckless, careless and unmindful of their duties which they owe to people. Either of the thing is correct, it is very serious and it is high time where the State of Gujarat has to take note of and look into the matter and take appropriate action against erring or defaulting officers. Be that as it may, the learned counsel for the respondents has failed to satisfy how this privilege claimed by respondent No.2 not to disclose the names and addresses of the privileged witnesses is legally sustainable in view of two decision of this court on which strong reliance has been placed by learned counsel for the petitioner. I have seen in many cases and in the two matters which have been decided today including this one that the respondent No.2 has adopted a course or method which is nothing but only contrary to the well settled position of law. What he is doing of mentioning in the grounds of detention to justice his action to claim privilege under Section 9(2) is wholly perverse. Despite of the fact that the decision in the case of Kalidas Kahar v. State (supra) was given by this court in the year 1993, and thereafter many decisions have been given, the respondent No.2 and other detaining authorities in the State are not correcting themselves on this aspect and still they are proceeding in the same manner and fashion. Despite of this judgment if in this manner and fashion the detaining authorities of the State are proceedings, therefrom two inference can be drawn, firstly, that it is deliberately done for the reason that a ground may be available to the detenu to get himself relieved of the detention order. This is further fortified from the fact that despite of giving direction by the court, reply to the special civil application has not been filed. Again three weeks' time is granted, still reply is not filed. This conduct shows that it is deliberately done so that the petitioner may not have any hurdle or obstacle in his way to get himself relieved of this detention order. Second inference which falls therefrom is that the detaining authority is acting wholly unmindful of its duties as well as without keeping in view the decisions of this court. It may be a case case of negligence or unmindful of duties which it owes to public but is a matter to be taken care of by the State of Gujarat. In case repeatedly it has been done despite of the decisions of this court, it may be a case of negligence or carelessness on the part of the detaining authorities for which the State has to take

appropriate action. Be that as it may, this matter is squarely covered by decision of Division Bench of this Court in the case of Kalidas Chandubhai Kahar reported in 1993(2) GLR 1659 and that of learned Single Judge (Coram: M.R.Calla, J.) in the case of Ranubhai Bhikhabhai Bharwad (Vekaria) v. State of Gujarat & Ors. reported in 2000(3) GLR 2696 and accordingly the continuous detention of the petitioner is illegal.

#. In the result, this petition succeeds and the same is allowed and the order of detention of the petitioner dated 22.11.2000 is quashed and set aside. The petitioner - Kalidas @ Kali Rangnath Madrashi, the detenu, at present at Rajkot Jail, Rajkot, be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. No order as to costs.

.....

(sunil)